ARAB OIL

THE URGENT NEED FOR A NEW DEAL

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Introductory Remarks

Of the seventeen Arab States which are members of both the Arab League and the United Nations, eleven are oil producers. Some of them have been producing oil for almost half a century in others, the discovery and production of oil is a relatively recent event. Of these eleven countries, seven have become major producers and, consequently, net exporters of oil. As such, they have become members of the Organisation of the Petroleum Exporting Countries, OPEC. The other four will probably achieve that goal in the not too distant future. Of the seven major producing countries, only Algeria has so far been able to abolish the concession regime completely and is now, as a result, in a position to exercise effective control over the oil industry within its territory. This was made possible because of a series of state measures in recent years, most significantly the partial nationalization of the French concession companies early in 1971. The nationalized share, which represents at least 51% of the holding, was allocated to the National Oil Company, SONATRACH. (1)

The remaining six countries, namely Abu Dhabi, Iraq, Kuwait, Libya, Qatar and Saudi Arabia have not yet been able, for various reasons, to rid themselves of the concession regime, although some, if not all, are, to varying degrees, actively concerned about this., mainly within the framework of OPEC. Consequently, any meaningful study of the position of

Arab oil at present and its impact on complete economic emancipation and development in the Arab world, must begin with a review and re-assessment of the oil concession regime.

The Concession Regime

The story of Arab oil, by and large, is the story of the concession regime. Paradoxically, this regime, which was introduced into the Arab world first of all in Iraq almost fifty years ago, is for the most part, as the saying goes, still alive and well.

a. - The Foreign Oil Companies: Majors and Minors

The eight major international companies which, to a very large extent, control the exploitation of Arab oil, are probably known to you all. They are vast, enormously powerful corporations, mainly privately owned, all determined to preserve their monopolistic interests and to maximize their profits. Except for one French company with a relatively limited interest, they are mainly British and American. To be more precise, five of these companies - which constitute the majority - are American-owned; of the remaining two, one is 49% owned by the British government while the other is a British/Dutch company. These companies, locked together in consortia, not only control by far the largest, lowest cost and most prolific fields in the Arab world, but they are integrated all over the globe, which assures their control also over production, refining and marketing in several countries.(2) In brief, they control three of every four barrels traded internationally outside the Soviet Bloc.

Apart from these majors there are, of course, several other foreign oil companies which are also engaged in the exploitation of Arab oil, likewise under the concession regime. These are variously referred to as the "new-comers", "international minors" or the "independents". Their appearance on

the international scene co-incided mainly with the post World War II period. They are based in a wider range of countries than the majors, e.g. the United States, the Western European countries and Japan. Some are wholly state-owned like the French ERAP and the Italian ENI; others are privately owned, such as the American and Japanese.

These international minors too are essentially motivated by self-interest, but the new circumstances which have prevailed during the last twenty-five years, together with their determination to gain a foot-hold on Middle East oil, have combined to make them not only less ruthless than the majors but also more inclined, perhaps, to accommodate some of the legitimate aspirations of the producing countries. Some of these newcomers offered to act as partners and contractors, thus entering into arrangements which are of a non-concessionary nature, such as joint-ventures or service contracts - new types of agreement which represent a big step forward towards the full exercise of state sovereignty over natural resources. However, as things now stand, these new companies are not, on the whole, in charge of more than 10% of Arab oil. Consequently, when reference is made in this paper to the "concession regime" and to the "foreign oil companies", it is mainly the conventional regime introduced and maintained by the majors which I have in mind.

b. - Sanctity of Contracts and the Political and Socio-Economic Conditions Attending the Early Concessions

Some of you must already be aware that the enlightened elements among the Arab people have never approved of this regime, nor have they ever resigned themselves to its survival. Some of you are probably aware that these elements

have never ceased to criticize it and to urge its transformation, if not its abolition altogether. This call for change has been gathering momentum within the Arab world and beyond, in the producing countries of Asia, Africa and Latin America, notably in those which have joined forces within OPEC. Some of these countries have succeeded already in bringing about the change; the others appear to be on their way to doing the same in the near future.

It will hardly surprise you to learn that the oil companies are opposing this call for change. As always in the past, they are invoking the so-called "sanctity of contracts". By this they mean that despite the abnormal conditions attending their conclusion several decades ago, and despite the drastic change in circumstances since that time, the concession agreements should continue to be strictly adhered to not only for the present but even until the contractual dates of expiry which are in some cases - in Iraq and Saudi Arabia for example - not until the end of this century, and as late as the year 2026 in the case of Kuwait.

In raising the banner of the "sanctity of contracts" in order to preserve their precious concessions as long as possible, the companies are probably not unaware that they are trying in vain to sanctify the non-sacrosanct. It is well known, I believe, that these concession agreements came into being under conditions which could hardly be said to justify their validity, let alone their sanctity. No objective observer would fail to realize that in attempting to rid themselves of this oppressive legacy of the past, the Arab countries, along with other oil producers, have not only equity and morality on their side, but the law itself. The position of the companies is clearly untenable, as I shall demonstrate.

Many of you may already be familiar with some aspects of the notorious story of the concession regime - both the conditions under which it came into being and its main features. At the risk of perhaps boring you by re-stating the obvious, I shall review in brief some of these aspects, since I believe that no real understanding of the present controversy is possible without a retrospective glance at the past.

As you know, one of the essential elements of a valid contract is the frèe-will of the parties entering into it. In the case of the oil concessions introduced into the Arab world at various stages during the last fifty years, such free will was, if not completely lacking, at least restricted by external factors.

It is to be stressed here that this experience was not confined to the Arab world. The emerging oil producers in Asia and Latin America, such as Indonesia, Iran and Venezuela had already had the same, if not even more bitter experience. The concession regime with all its oppressive aspects was first thrust upon these countries before the First World War and subsequently imported into the Arab world. (Iraq in 1925, Saudi Arabia, Kuwait and the rest of the Arabian Gulf during the years 1933 - 35.)

It is likewise common knowledge that most of the concession-granting countries were at the time under the rule of a colonial power which had the upper hand. Kuwait, Bahrain, Qatar and the other sheikhdoms and emirates in the Arabian Gulf were obliged to accept the "advice" of the British Political Resident, in accordance with their treaties of protection with Great Britain. It does not require much

imagination to realize how that "advice" was rendered. As you know, the interests of the British Government and some of the oil companies were identical. The exercise of influence in fact transcended the mere imparting of advice.(3)

No objective observer would, I believe, seriously try to maintain that the signature and seal on the concession agreements of the rulers of these countries and territories should be taken in all good faith to signify the true exercise of free-will.

Let me cite here also the case of Iraq. When the IPC Agreement was concluded in 1925, Iraq was still under the mandate of Great Britain. The circumstances attending the signing of this concession are a classic example of extreme duress. At stake was the vital Province - "willayet" of Mosul. It is widely acknowledged that the Frontier Commission appointed by the League of Nations to settle the dispute between Iraq and Turkey after the First World War was reluctant to give a decision in favour of Iraq before the conclusion of an agreement with IPC, in which incidentally the British Government was, and still is, a major share-holder. The British Government informed Iraq at the time that IPC's claim to the concession was valid and that in view of the Turkish Government's promise on 28 June 1914 to grant IPC a concession in the province of Mosul and Baghdad, the Iraqi Government was under a binding obligation to carry out that promise. Furthermore, the British authorities threatened not to allow the new constitution of Iraq to be ratified until the concession was granted. The Iraqi Government had no alternative but to accept the terms offered by the company.(4)

Even if, for the sake of argument and in an attempt to give the benefit of the doubt to those involved in the matter at the time we suppose that free-will did exist, the most charitable explanation would be that these countries were not sufficiently aware of what they were giving away. It was not known yet for sure whether or not there was actually oil under their soil. To give but one example, Kuwait was not considered, initially, to be geologically promising, a fact which certainly was reflected in the meagre financial terms offered to Kuwait for its future oil. (5) Besides, there was almost complete unfamiliarity on the part of the rulers, not only with the oil industry elsewhere, but also with this type of agreement with all its fine print and complicated legal terminology. There was also a complete absence of competitive bidding. In addition to this, we must remember that oil had not yet become the vital source of energy which it proved to be several years later. The fact that almost all of these countr-were not only politically weak and dependent at the time but also economically under-developed and extremely poor, certainly contributed also to their acceptance of the modest price paid for their oil under the concession regimes. Indeed they would have accepted any price and regarded it, at the time, with deep gratitude as unexpected manna from heaven to sustain their primitive economy.

c. - The Main Features of the Concession Regime

As a result of the colonial regime, these concessions were granted under restrictive practices which were endorsed by the notorious "Red Line" Agreements of 1928 - a fact which seriously impaired the bargaining position of the granting countries. This was contrary to normal practice elsewhere,

such as the United States, the home of most of the major oil companies, where, according to federal law, no concessions could be granted on public land without competitive bidding. The result was, in the words of an American author, that "never in modern times have governments granted so much to so few for so long". (6)

Let us now review some of the main features of the concessions:-

i. The area of the concessions was enormous; if it did not comprise the whole territory of the state, it covered the best and largest part of it. The IPC concession of 1925 in Iraq, for example, and the two later concessions of its affiliates MPC and BPC of 1932 and 1938 respectively, covered the entire territory of Iraq. The ARAMCO concession of 1933 in Saudi Arabia, as extended in 1939, covered almost half a million square miles (496,000). The concessions granted to KOC, BABCO and QPC by Kuwait, Bahrain and Qatar respectively, covered likewise almost the entire territory of these countries. This confirms again the monopolistic character of these concessions.

ii. Although relinquishment of part of the concession area was the normal practice in the oil industry elsewhere, either it was not provided for under the original agreements or it was stipulated but deliberately never implemented by the companies. It was largely because of the promulgation of Law No. 80 in Iraq in 1961 - which forced the companies to relinquish those areas which had hitherto remained idle or unexplored for 23-36 years - that relinquishment was reluctantly acquiesced to by the companies in other Arab countries. Never-

theless, some companies still retain large areas which contain far more than adequate reserves, even for the exceptionally long duration of their concessions. (7)

It is particularly revealing to cite in this context the case of the United States itself, when leasing American public land for oil exploration. According to an American writer, the policy of the Federal Government has been designed to prevent monopoly exploitation of oil lands. Federal laws limit the area covered by exploration permits. They limit the area a prospector may lease after the discovery of oil to one-fourth of the lands covered in the exploration permit with a minimum of 160 acres (8)

iii. The duration of the concessions was, as we have noted, exceptionally long, generally ranging from sixty to seventy-five years. You will remember that in some cases it ran to as many as ninety-two years, as in the KOC Agreement in Kuwait. Again when one considers the United States, the great disparity between the terms imposed upon the Arab world and the American federal laws becomes more than obvious. There the lease of the concessionnaire is limited to only twenty years after the discovery of oil. (9)

iv. The financial rewards accruing to the producing countries were very modest. Apart from certain minor benefits under some of the agreements, the main financial feature was the payment of royalty only. The equal division of profits in accordance with the 50-50 formula was not introduced into the Arab world until 1950, first of all in Saudi Arabia, after long negotiations. Shortly afterwards the Formula was introduced into the other concessions in the Middle East.

One must remember, however, that this new arrangement in fact entailed very little loss to the companies, if any, because in accordance with the tax laws of the United States and Great Britain, the companies were able to reduce their tax payments at home by the amount of tax paid to the producing countries. (10)

v. The companies retained complete freedom of action in vital matters affecting production and prices. Participation by the producers in the equity ownership of the concession was either denied altogether or meagrely provided for in some, but deliberately never implemented by companies. Participation in the actual management was, on the whole, restricted to symbolic representation on the Boards of certain companies. I need scarcely add that such representation has had no influence on substantial matters and policy decisions.

You may wonder why the companies consider it so vital to retain complete freedom of action with regard to prices and production. The answer is simple. They see this as an important bargaining chip in their recurrent confrontations with the producers. The level of production can be used either as a deterrent or as an outright penalty whenever the producing countries attempt to press their legitimate claims. The growth rate can be slowed down or, worse, production itself reduced. A clear example of this is the deliberate stagnation of growth in production during the last decade in Iraq, in retaliation for the enactment of Law No. 80 of 1961. (11)
Normally price-cutting cannot be used to single out an individual country but it can, nevertheless, be used to strike at widely separate producers. By way of illustrating the devious exercise of this prerogative by the companies, let me cite the case of Venezuela: in February 1959, two months after Venezuela had increased the rate of its income tax, the companies operating there reduced the price of Venezuelan crude. (12)

d. - Marginal Modification of the Regime

I have already mentioned the fact the the concession regime both in the Arab world and in the other major exporting countries underwent, in the period following the Second World War, certain modifications mainly of a fiscal nature, which were more favorable to the producers. This was brought about under the impact of changed circumstances.

As to the non-fiscal terms, the main change in the regime was brought about in respect of relinquishment and the subsequent reduction of the area under concession. This was chiefly as a result, as already indicated, of the promulgation in Iraq of Law No. 80 in 1961 which influenced directly the trend towards more progressive relinquishment in other Arab countries.

It is well to keep in mind that these changes, which were long overdue, were conceded by the companies with the utmost reluctance and after protracted negotiations, when it was abundantly clear that they could be delayed no longer. As must now be well-known, the companies will yield to the demands of the producers only when there is a real risk of being forced into a worse alternative.

Nevertheless, despite the relative improvement in the producers' position as a result of these changes and certain subsequent others achieved under the aegis of OPEC, such as the full expensing of royalty in 1965 and the recent raising of the rate of income tax and the level of posted prices in 1972, the main structure of the concession regime is still intact. In the words of a leading London paper, the position of the oil companies "has been virtually untouched and may indeed have been strengthened". (13)

Now, if it were left entirely to the will of the companies, with their almost fanatical adherence to the so-called "sanctity of contracts", this regime would obviously persist in the Arab countries until the pre-fixed expiry date of their concessions almost thirty or even fifty years from now. Clearly, when one considers contemporary conditions both within the Arab world and beyond, this seems to be a dream-like fantasy on the part of the companies. The concession regime as it exists today is an anomaly, a vestige of colonial rule which cannot be tolerated much longer. It is interesting to note that no less a publication than the 'Economist' of London has seen fit to acknowledge this. In an issue of last July, after referring to the "objectionable colonial overtones" of the concession regime and its "history dating back to when Turkish sultans still ruled the Middle East ....." it went on to say:

> "Like it or not, it is now accepted in London that the legal expiry date of any Middle East concession has less practical meaning with each day that passes." (14)

e. - Legal Justification for Revision

I have already alluded to the argument based on the sanctity of contracts on which the companies seem solely to rest their case in resisting the legitimate demands of the producing countries, Arab and non-Arab alike. I have also tried to demonstrate that this argument cannot be sustained because the free-will of the parties which is an essential precondition for the validity of a contract cannot be said, in all good faith, to have been present when these concessions were granted. This lack of free-will resulted in an imbalance of the bargaining power of the two parties and consequently in an inequivalence

of benefits assigned to each under the concessions. This fact alone would justify the revision and modification of these concessions.

Even if, for the sake of argument, we do presume that these concessions were initially valid, with no vitiating factors attending, it is still possible to counter the companies' argument on the basis of changed circumstances and other pertinent considerations.

In doing so, one should of course be fully aware that the present confrontation between the producing countries and the oil companies is not strictly a legalistic one, i.e. the outcome will not ultimately be resolved through a legal process or before a judicial tribunal. The confrontation is, as has always been the case in the past, predominantly a political one. The success of the producing countries will be determined mainly through the effective exercise of their new-found collective power and the full utilization of their improved bargaining position. However, it is essential that they bear in mind that theirs is <u>not</u> a naked exercise of power and that they are both legally and morally justified in striving for a new deal.

Let me review with you in brief some of the arguments which could be advanced in this respect:-

i. It is well-established now both in international law and in various municipal laws, that changed circumstances is a valid reason for the revision and modification of contractual arrangements. In international law this is achieved by the operation of the doctrine of 'rebus sic stantibus'. Under municipal law it is achieved through such doctrines as, for example, the doctrine of frustration or supervening impossib-

ility of performance developed by the English courts since the latter half of the nineteenth century and, under French administrative law, by the theory of'l'imprevision'. On an occasion such as this there is no need to dwell at length on this point.(15)

ii. The second consideration is equity. I am pleased to have the opportunity here of drawing attention to this great landmark of English Common Law. Equity, as understood and applied in England has, of course, its counterparts in other legal systems apart from the Anglo-American. But nowhere, I believe, has equity been so developed and had such a salutory and enduring impact on the development of legal rules, adapting them to new social needs and emerging norms and values. The rationale behind equity is steeped in notions of fairness and justice, transcending wherever the need arises, the boundaries of legal formality and rigid rules.

Unfortunately neither time nor the scope of this lecture permit either an adequate discussion of the role equity can play in the context of the re-negotiation and transformation of the oil concession regimes.

iii. Yet another consideration is the one based on the analogy with the current policies and practices of western industrialized countries which are not only the home of the major oil companies, but also, like the United States, are deeply committed to the notion of free enterprise and the supremacy of profit-making. The British Government was the first one to take over a controlling share in the ownership of any major oil company. In France the Government owns large holdings in most French oil companies and tightly controls the activities of all oil companies operating in the country,

whoever owns them. (16) In the United States the oil industry is subject to a wide range of regulation by various authorities to an extent that suggests, in the words of an English writer, "that there is something about this industry that positively invites regulation". (17) In the United States, furthermore, government contracts are subject to re-negotiation with a view to recapturing any excessive profits made by government contractors. The practice was first established to apply to defence contractors during the First and later the Second World War, but it has remained applicable to all government contracts in peace time also. In this context one can cite the Re-Negotiation Act of 1951 passed by the American Congress to permit the re-negotiation of contracts entered into between government agencies and private companies with special emphasis on excessive profits. (17) (18)

iv. Finally, in agreeing at various successive stages to the modification of certain terms in their respective concessions, albeit reluctantly and belatedly, the oil companies themselves have, by their own conduct, accepted by implication at least, the idea that changed circumstances constitute a valid reason for the re-negotiation and amendment of concession agreements.

f. - Manifestation of Changed Circumstances

Although it is not difficult to conceive the nature and extent of developments - political, socio-economic and others which occurred during the last fifty years or so, both within the Arab world and beyond, it might be useful to review with you in brief some of its manifestations.

The first and most obvious is, of course, the attainment at various stages, of political independence by the Arab oil

producing countries, a fact which should entail in its aftermath genuine economic emancipation.

The other, which is of a more universal nature, is the emergence after the Second War of the world-wide movement for the complete liquidation of colonialism and all its vestiges. As you know, this has been greatly enhanced, on the one hand, by the adoption of the United Nations Charter and subsequently on the other, by the several resolutions which the General Assembly adopted in the sixties, with an overwhelming majority, on the permanent sovereignity of all nations over their natural resources.(19)

Apart from this, changed circumstances are further evidenced in the oil industry itself and the inter-relationship of the oil producers in the following:-

i. As a result of the improvement in their bargaining posotion, and also because of the introduction of competitive bidding, some of the producers in the Middle East and elsewhere have succeeded in concluding new types of oil contracts such as joint ventures and service contracts. These new agreements represent a pronounced departure from the conventional concession regime, and they are more favourable to the producers. For example the duration is much shorter, the area much smaller and subject to progressive relinquishment, and the fiscal benefits are higher. Government participation in both the equity ownership and management of these new enterprises has been provided for. One must remember that the foreign oil companies which entered into these agreements are, basically, also motivated by profit-making; the fact that they have accepted these terms and are willing to operate under comparatively less favourable terms from those granted to the majors in the past, is a further indication that the latter have been,

and still are, reaping highly excessive returns on their investment under the concession regime

ii. The formation of national oil companies in all the Arab producing countries. Some of these national oil companies may still be, at present in the words of the 'Guardian' of London "..... predictably short on expertise - probably as a result of deliberate foreign oil company policy". (20) Nevertheless, they are manned by an increasing number of indigenous technical and economic experts and administrative personnel. Some of them are already moving into various aspects of the oil industry either on their own or in partnership with others. This fact is very important inasmuch as it makes effective state participation in, and control over the oil companies both feasible and even more desirable.

iii. The creation of OPEC, to which all major Arab producing countries now belong. This is, of course, neither the time nor the place to review the past achievements and failures of OPEC during the first ten years of its existence, nor to analyse the reasons under-lying them. What should concern us here is the fact that OPEC has of late been able to seize upon and utilize, in the collective interest of its members, certain unexpected external factors such as the sudden change in the market situation induced to a large extent by the radical measures taken by certain producers. The time seems to have passed when the major companies were able to defeat or frustrate the legitimate claims of the producing countries by playing one off against the other. This fact is admitted, surprisingly, even by publications normally sympathetic to these companies.(21)

The Inevitability of Change - Amicable Re-Negotiation or Nationalization?

It must have become clear to you now that the Arab producing countries have been compelled by various circumstances to accept, so far, the negative role which has come to be known as a "sleeping partner" - collecting only royalties, taxes and perhaps some other fringe benefits, without any effective role in conducting any important aspects of the oil industry which is carried out within their own boundaries. This state of affairs, it is now widely felt, just cannot be tolerated any longer.

The nature and extent of the change sought should now be clear to all. It is simply that these countries are both keen and able to take an active part in the running of their oil industry. Since such a fundamental change cannot possibly be implemented within the present frame-work of the concession regime, it follows that the regime itself should either be eliminated altogether or at least undergo extensive restructuring in order to make this change possible.

There are of course those who would advocate that the simplest and shortest way to achieve this goal lies in the immediate and all-out nationalization of the oil concessions by each and every Arab state. Nationalization exercised for the public good is, as you probably know, an inherent prerogative of all sovereign states. It is clearly recognized both under international law and various municipal laws; it was endorsed on several occasions by Resolutions on the Permanent Sovereignty over Natural Resources passed by the General Assembly of the United Nations It has been widely practised by

various states at various times, including the major industrialized western nations such as Great Britain, France and Italy. Nobody is entitled to deny any Arab state this sovereign right, should it decide to follow this course of action for the public good. (22)

In spite of this inalienable right, all the Arab states are trying at present to tackle the problem with a relatively mild and perhaps more conciliatory approach. It is within this context that the current call for state participation in the ownership and management of the existing concessions is being sought. They are actually in the process now of negotiating this issue with the companies. This negotiating approach is, of course the first option open to them and the one which they have consistently resorted to initially. These countries which took unilateral action in the past to enforce their legitimate claims did so only when faced by the intransigence of the companies. Although they have individually the legal right and collectively the power, more than ever before, to enforce their demands through unilateral action, they are trying at present to realize their goals through the patient process of negotiation

If state participation is to have any real meaning and if it is to achieve its essential objectives, each Arab government should aim, at least, at an equal share in the management and ownership of the foreign enterprises which are at present exploiting its oil. This rate of participation should be achieved immediately. It is what Algeria has already more than attained and, incidentally, what Libya is reportedly pursuing at present. If, however, for any compelling reason it does not prove possible to implement this, then minority participation can only be tolerated, especially in the case of the

larger Gulf producers, if it is coupled with a fixed and well-defined time table agreed upon in advance by the companies for the realization of majority participation within the shortest possible span of time.(23)

In any event, one essential point must be borne in mind, namely that state participation should be viewed not as a permanent alternative to complete state control, as some press reports recently speculated,(24) but as a tactical and transitory device towards the ultimate goal which ought to be achieved by all the Arab producers as soon as is feasible

State participation is just one of the important aspects of this formula for change. There are, of course, other long outstanding matters which ought to be settled to the satisfaction of the producing countries in the course of the re-negotiation and restructuring of the concession regime. Some of these matters are outlined in the Declaratory Statement of Oil Policy, passed by OPEC in June, 1968. This statement constitutes the interim blue-print for action within the framework of which OPEC members, Arab and non-Arab alike, are to co-ordinate and realize their objectives.

Another important matter which has attracted wide attention of late and was endorsed more recently by OPEC Resolution XX-113 of June 1970, is the need for the repatriation and re-investment of an adequate portion of the proceeds earned by the foreign oil companies, in the national economy of each producing country.

In order to render their claim for re-patriation of earnings morally stronger Arab producing countries should endeavour to demonstrate to all that their oil revenues are not only being wisely disposed of internally, but also that "surplus" countries

are genuinely trying to help the "have-nots" in their efforts towards economic development. After all, the Arab masses everywhere should somehow share in the benefits of Arab oil, without strict regard to present political boundaries.

In conclusion may I point out that once the inevitability of change is duly recognised by the companies, the way will be paved for bringing the new order of things into being, quickly and smoothly. The long relationship which the Arab countries have had with the foreign oil companies has always been marred, as you all know, by lack of confidence, recurring crises and a deep sense of grievance - which were never conducive to genuine and harmonious co-operation. There is an urgent need that this should give way very soon to a completely new relationship, recognizing on the one hand the sovereign rights of each Arab state over its natural resources while, on the other, assigning to the foreign companies a new role which, although considerably restricted, would, nevertheless, assure them a just and reasonable return on their investment.

Once the companies have reconciled themselves to this and to the dimensions of the new deal which ought to be realized, there is no reason why they should not continue to play a constructive role in the light of their vast experience and their marketing and transportation facilities world-wide. All indications seem to confirm the present trend that the role of the international oil companies ought to be transformed, in the words of a leading trade journal, from that of an "autocrat" to that of an "agent".(25) This is the road to genuine stability which reason and reality dictate to safeguard the legitimate interests of all concerned - producers consumers and middlemen alike

NOTES

(1) The Algerian daily, 'El Moudjahid', in its issue of 2 and 3 January, 1972 was quoted by 'Arab Oil and Gas' of Beirut, vol. 1 No. 8 (16 January, 1972) as saying that since the recent abolition of the concession regime in Algeria, SONATRACH controls 77% of oil production, or 41.7 million tons in 1972, owns fully thirty-two fields and has an interest of 75% or more in six other fields as well as 63.5% of the great field of Hassi Messaoud; it fully owns all the gas fields and pipelines.

For a further assessment of the results achieved by Algeria in its recent agreement with the French oil companies whose interests were partially nationalized, see the study prepared by and published in 'Arab Oil and Gas', vol. 1, No. 7 (January 1, 1972).

(2) A recent article on the Standard Oil Company of New Jersey was aptly headlined: "Australia to Zambia - the Sun never sets on Jersey Standard's Increasingly Profitable Empire". Quoted by Michael Tanzer: 'The Political Economy of International Oil and the Underdeveloped Countries", Boston, Beacon Paperback, 1970, page 35.

In his 'Politics of Oil', New York 1961, Robert Engler says the following: "The global interests and jurisdiction of these corporations in turn are part of a system of arrangement and understanding that they may be called the first world government". Page 3.

(3) The close relationship between the British Government and its oil companies has been described by a United States Petroleum Attache in the Middle East during World War II as:

> "..... so intimate that it is difficult to discuss where the oil companies end and where the Government begins .. ... The Government, wherever it has a shadow of influence, uses its power by fair means or underhand to secure markets or concessions for its British-owned companies. Every conceivable subterfuge, use of assumed authority over mandates, threat, intimidation, distortion of the laws, or bribery is used to aid their companies in securing oil concessions in weak countries and holding their markets against all comers ...." Quoted in Engler, op. cit. page 249.

In this connection one can also point to the affinity often displayed between the United States Government and the American oil companies operating abroad. In the words of one American writer:

> "..... The State Department has often taken its policies right out of the executive suites of the oil companies. When Big Oil can't get what it wants in foreign countries, the State Department tries to get it for them. In many countries, the American Embassies function virtually as branch offices of the oil combine .... The State Department can be found almost always on the side of the "seven sisters" as the oil giants are known inside the industry." Jack Anderson, 'Washington Expose', Washington 1967, page 202, quoted in Tanzer, op. cit. page 53.

(4) Zuhair Mikdashi 'A Financial Analysis of Middle Eastern Oil Concessions 1901-65', New York 1966, page 70.

There were other bargaining techniques used skilfully by the concession companies in achieving their goals, such as what

Gulbenkian called an 'inducement, a 'sweetener' or a 'douceur'. "King Feisal was promised, for example, a little present of £40,000." Ralph Hewin's 'Mr. Five Per Cent', the biography of Galouste Gulbenkian (London 1957), quoted by Mikdashi pages 65, 71.

In his book 'Middle East Oil', George Stocking observed that:

> "The King and his Cabinet ratified the new concession on March 14, 1925, one week before King Feisal promulgated Iraq's organic law and approximately seven months before the Iraqi Parliament ratified the treaty defining Iraq's obligations under the mandate principle, in short, before an autonomous Iraq government had anything to say about it." Page 52.

(5) Mikdashi, op. cit. pages 81, 82.

(6) Stocking, op. cit. page 130. In this context it is particularly interesting to note here what the 'Guardian' (weekly) of London had the moral courage to say recently:

> "Whether the West likes to admit it or not, the oil producing countries of the Middle East <u>were exploited savagely at the outset</u> and have suffered from their initially unsought position as lynchpins in the economic-political warfare of the western industrial society." per Anthony Tucker, September 11, 1971. (Emphasis added.)

(7) For detailed treatment of this see my paper 'Progressive Relinquishment under OPEC Declaratory Statement of Policy' (1968) presented to the Seventh Arab Petroleum Congress, Kuwait, March 1970 and published in the 'Middle East Economic Survey' Beirut, Vol. XIII no. 22 (March 27, 1970).

(8)&(9) Stocking, op. cit. pages 130,131.

(10) J.E. Hartshorn 'Oil Companies and Governments', Faber & Faber, 1967, page 198.

(11) "Between the break-off of the IPC-Iraqi negotiations in October, 1961 and the downfall of General Kassem in February, 1963, for example, IPC production remained more or less static, a fact which the Baghdad daily 'Al-Bayan' (whose comments, under the editorship of oil expert Muhammad Hadid, were the most constructive in the Baghdad press) stigmatized as a typical instance of the companies' time-worn monopolistic tactics ..... To take a more specific instance, IPC was once accused of lowering production in direct retaliation for the imposition of higher port duties at Basrah". David Hirst, 'Oil and Public Opinion in the Middle East', New York 1966, page 142. Quoted in Tanzer, op. cit. page 66.

(12) Tanzer, op. cit. page 66

(13) 'Financial Times', July 10, 1971.

(14) 31 July, 1971.

(15) For further details see my paper 'Impact of Changing Circumstances on the Revision of Petroleum Contracts', presented to the Vienna Seminar on Petroleum Economics, July 1969, and published in the 'Middle East Economic Survey', Beirut, Vol. XII, No. 37 (July 11, 1969) and also in 'Le Petrole et le Gaz Arabes', Beitur Vol. I, No. 8 (July 16, 1969).

(16) Hartshorn, op. cit. page 33.

(17) Hartshorn, op. cit. page 228. While the oil companies seem to accept government regulation within the United States as a fact of life, they strongly resent and oppose the interference of governments outside the U.S.A. ibid.

(18) For a full discussion of this Act and the policies underlying it, see Robert Braucher 'The Re-Negotiation Act of 1951', Harvard Law Review, Vol. 66, No. 2 (December 1952).

(19) Particularly Resolution 1803 (XVII) of December 14, 1962 and Resolution 2158 (XXI) of 28 November, 1966.

(20) 'The Guardian' (weekly) London, September 11, 1971.

(21) See, for example, 'Time Magazine' New York, January 24, 1972:

> "As recently as the mid-sixties, the oil companies could play the exporting countries off against one another, often driving down demands from one government by threatening to buy (sic) more oil from others." Page 45.

(22) It is particularly interesting to note here what an English writer remarked a few years ago about the ironical attitude displayed with regard to "nationalism" when exercised by the developed and underdeveloped countries:

> "This phenomenon is very easy to recognise and label when somebody else is displaying it - particularly for Westerns when the somebody is in Asia or Africa. Whenever we display it ourselves, whoever and wherever we are, we tend to identify it as the 'national interest' - another thing altogether." Hartshorn, op. cit.

(23) For further details see my paper 'Sovereignty, State Participation and the Need to Re-Strucrure the Existing Concession Regime' presented to a Colloqium held in Algiers last October on 'Petroleum Law and the Sovereignty of the Producing Countries', and published in 'Arab Oil and Gas', Vol. 4, 1971; also in the 'Middle East Economic Survey', Vol. XVI, No. 3 (November 12, 1971).

(24) See, for example, the article by Adrian Hamilton in the 'Financial Times', January 20, 1972.

(25) 'Oil and Gas Journal', Tulsa, January 10, 1972.

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